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Sent: Fri 2/7/2014 2:42:53 PM

Subject: Water Law News for February 7, 2014



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tbn0.gstatic.com/images?q=tbn:ANd9GcRN9bpm12acAzW1AGcHT7RdHbOs0JSkOJn1FfjRgHelJFdzNLI-**Water Law News**

for February 7, 2014



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Drilling

<u>Iowa Fracking Sand Study Warns</u> Of Possible Water Quantity, Quality Effects

An Iowa Policy project study of sand mining for hydraulic fracturing in the state said that both water quantity and quality in northeast Iowa could suffer if safeguards aren't put in place....

Drilling

White House Completes Review of Guidance For Permitting Fracking With Diesel Fuels

The Obama administration completed interagency review Feb. 5 for an Environmental Protection Agency guidance on permitting of oil and natural gas wells where diesel fuels are used in hydraulic fracturing fluids....

Drinking Water

<u>Senate Panel Approves Measure to Help</u> Small, Rural Drinking Water Systems

The Senate Environment and Public Works Committee approved legislation Feb. 6 that would provide assistance to small, rural drinking water systems across the U.S....

Oil Spills

Chevron Must Turn Over Documents in Ecuador Case

Federal Rule of Civil Procedure 26(b)(3) does not shield from discovery all materials used by testifying experts, the U.S. Court of Appeals for the Ninth Circuit ruled Jan. 31, rebuffing a bid by Chevron Corp. to overturn a pair of discovery...

Regulatory Policy

Senate Committee Clears Stalled Nomination

Of EPA Water Official, Five Other Nominees

The Senate Environment and Public Works Committee has cleared the nomination of an Environmental Protection Agency water official that had been stalled for more than two-and-a-half years....

Water Pollution

House Lawmakers Invited to Join Water Caucus

Rep. John Duncan (R-Tenn.) and Rep. Tim Bishop (D-N.Y.), co-chairmen of the newly formed Congressional Clean Water Caucus, invited their colleagues to join the bipartisan caucus that was set up to educate policy makers about the innovative...

Water Pollution

Los Angeles County Asks Supreme Court To Review Stormwater Permit Liability Ruling

The Los Angeles County Flood Control District has asked the U.S. Supreme Court to review a decision that held the district liable for violating a multi-jurisdiction municipal stormwater permit issued under the Clean Water Act (Los Angeles...

Water Resources

Boxer Says Negotiators Reach Compromise On Key Issue in Water Resources Legislation

Negotiators have reach a compromise over a critical issue holding up the conference report on water resources legislation....



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Environmentalists File FOIA Suits In Bid To Strengthen Keystone Challenges

Environmentalists are pursuing a series of Freedom of Information Act (FOIA) lawsuits in federal courts in a bid to gain data that could strengthen eventual Clean Water Act (CWA) and Endangered Species Act (ESA) challenges to the Keystone XL tar sands oil pipeline ahead of an Obama administration decision on whether to approve the project.

Keystone Review Highlights Water Spill Risks, Downplays Corrosion Threat

The Obama administration's revised environmental assessment of the Keystone XL oil pipeline generally backs past findings that the project will not increase spill risks, but the document offers new analysis showing the unique risks posed by heavy tar sands oil when spilled in water, though it says an onshore spill could be less complicated than a conventional spill.

EPA Makes Final Push To Reject Suit Over Climate Effects On Sewer Upgrade

As they prepare for a critical Feb. 10 court hearing, EPA's lawyers are making final arguments in their effort to stave off environmentalists' novel challenge to their proposed consent decree for upgrading sewer infrastructure in Miami-Dade County, FL, on the grounds that it does not appropriately address sea level rise and other climate change effects.

Latest Blogs

EPA Urged To Expand PFC Advisory

A New Jersey town, backed by the state's former top environment official, is asking EPA Administrator Gina McCarthy to weigh in on how to handle.

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WETLANDS:

Senate EPW panel votes to extend conservation grant program

Annie Snider, E&E reporter

Published: Thursday, February 6, 2014

A bill to extend a popular wetlands conservation program was among a package of water and wildlife bills advanced by the Senate Environment and Public Works Committee by voice vote this morning.

The North American Wetlands Conservation Act, which funds conservation programs through a competitive grants process that requires a private match, is popular with sporting and conservation groups. <u>S. 741</u>, from EPW Committee ranking member David Vitter (R-La.) and 14 bipartisan co-sponsors, would reauthorize the program through 2017.

"Louisiana, the sportsman's paradise, is home to many of our nation's cherished wetlands, and this bill helps protect and restore wetlands across the country," Vitter said in a statement. "Wildlife-related recreation actually generates billions of dollars of economic output each year, and reauthorization would allow folks across the country to continue protecting and enjoying one of nature's treasures."

Groups swiftly hailed the move, as well as the committee's approval of a measure (<u>S. 1865</u>) to raise the price of the federal duck stamp to \$25.

"Many areas in the United States are experiencing tremendous droughts," Ducks Unlimited CEO Dale Hall said in a statement. "The wetlands conserved and restored with NAWCA and duck stamp recharge the underground aquifers that many Americans rely on for drinking water. These are important programs for our country's waters, wetlands and wildlife."

Other bills the committee approved by voice vote:

- <u>H.R. 724</u>, which would strike a Clean Air Act requirement for auto dealers to provide certification of emissions compliance for new vehicles.
- S. 51, which would extend the National Fish and Wildlife Foundation through 2019.
- <u>S. 970</u>, which would amend the Water Resources Research Act to require research into alternative water treatment methods and extend authorizations through 2018.
- <u>S. 864</u>, which would offer assistance to small public water systems to comply with national primary drinking water regulations.
- <u>S. 969</u>, which would reauthorize the Neotropical Migratory Bird Conservation Act through 2019.
- S. 212, which would approve the transfer of Yellow Creek Port properties to luka, Miss.

- <u>S. 1077</u>, which would extend funding for the Chesapeake Bay Gateways and Watertrails Network through 2018.
- <u>S. 1451</u>, which would set up forest management activities in California's Lake Tahoe Basin
- <u>S. 1080</u>, which would establish studies and public outreach on conservation on Long Island Sound.
- 20 General Services Administration resolutions.

The committee also approved several nominees (see related story).

WATER POLLUTION:

Freedom Industries chief invited but unlikely to show at W.Va. spill hearing

Jason Plautz, E&E reporter

Published: Thursday, February 6, 2014

Freedom Industries Inc. President Gary Southern has been invited to testify before the House Transportation and Infrastructure Committee at a hearing next week on the spill from his company's chemical plant that left 300,000 West Virginia residents without tap water for days.

A Freedom Industries spokesman said Southern is unlikely to appear at Monday's field hearing in Charleston, W.Va.

Southern has largely been silent in the weeks after a tank at a Freedom Industries facility leaked 10,000 gallons of a mixture containing the coal-scrubbing chemical 4-methylcyclohexane methanol, or MCHM, into the Elk River, polluting tap water for parts of nine counties. Residents are still reporting illnesses, and there's been concern about whether the water is clean and how federal officials determined a safe MCHM level.

Freedom filed for bankruptcy days after the spill, leading to questions about who would

be responsible for paying for the cleanup (*Greenwire*, Jan. 21).

Monday's T&I Committee hearing will examine a variety of issues related to the spill, including the circumstances that led to the chemical leak and the federal response. A variety of state and federal officials are slated to testify, including Chemical Safety Board Chairman Rafael Moure-Eraso. CSB is investigating the spill and has testified at state hearings on the response.

Also appearing will be West Virginia American Water President Jeff McIntyre, West Virginia Homeland Security and Emergency Management Director Jimmy Gianato, State Health Officer Letitia Tierney and state Department of Environmental Protection's Emergency Response Director Mike Dorsey. Officials from Kanawha and Cabell counties will also testify.

OCEANS:

Marine reserves often fail to protect species -- study

Published: Thursday, February 6, 2014

Most protected marine areas appear to fall short of their mandates to protect aquatic life, researchers found.

For the study, researchers at the University of Tasmania in Australia looked at 87 marine protected areas in 40 countries. They searched for five characteristics of a well-managed marine park: no fish take, well-enforced regulations, more than a decade old, bigger than 100 square kilometers and isolated by deep water or sand.

Researchers found that parks with four or five of the traits were effectively conserving species. The best marine parks had an average of eight times more large fish and 14 times more sharks than fished areas.

But they found 59 percent of the parks were "not ecologically distinguishable from fished sites."

"Given the huge changes now occurring out of sight underwater, and our poor knowledge of exactly what is happening and how best to deal with the various threats

individually, the need for protected areas that safeguard whole communities of marine species has never been greater," said Graham Edgar, lead author of the report and researcher at the University of Tasmania's Institute of Marine and Antarctic Studies.

The research appears in the journal *Nature* (Oliver Milman, <u>London *Guardian*</u>, Feb. 5). -- **WW**

FISHERIES:

Conditions improve at plagued Nev. marina

Published: Thursday, February 6, 2014

Conditions seem to be improving at a Nevada marina that recently suffered from a massive fish die-off.

The water in the man-made, 77-acre Sparks Marina registered no toxins, and its oxygen supply is slowly increasing, Nevada Division of Environmental Protection researchers found. They speculated that unusually cold weather could have led to disruptions in the lake that caused the fish deaths.

"All the testing has shown nothing alarming and nothing out of the ordinary," Chris Crookshanks, a department fish biologist, told the *Reno Gazette-Journal*.

Even so, plans to restock the lake are on hold until oxygen levels increase further.

An estimated 100,000 trout, catfish and bass died in the marina late last year. Last month, researchers found extremely low oxygen levels in the lake (AP/Philadelphia Inquirer, Feb. 5). -- **WW**

WEATHER:

Temperature swings bring rare 'frost quakes' to Midwest

Published: Thursday, February 6, 2014

The extreme fluctuations in temperature across the Midwest this winter have brought a rare natural phenomenon known as "frost quakes."

Frost quakes, technically known as cryoseism, occur when moisture in the ground suddenly freezes or expands. With a sudden, steep drop in temperature and the right ground conditions, the soil or bedrock can snap, creating earthquakelike rumbles and short bursts of flashing light.

Frost quakes started occuring last month in Indiana, Michigan, Ohio, Wisconsin and Canada. Last weekend, with temperatures in Missouri dropping from the 40s on Saturday to single digits Sunday night, residents of small towns like Paris and Hannibal -- Mark Twain's home town -- felt them for the first time.

Frost quakes are most common in the northern Plains, according to AccuWeather meteorologist Alex Sosnowski.

Typical earthquake tremors occur a mile or two below ground, but frost quakes hit nearer the surface and do not show up on seismographs, said Robert Herrmann of the Saint Louis University Earthquake Center.

The flashes of light reported by some people are suspected to be a result of electrical changes occurring when the freezing compresses rocks (Jim Salter, <u>AP/Kansas City Star</u>, Feb. 5). -- **HG**

WATER POLLUTION:

Doctors still advise some against drinking from taps after W.Va. spill

Published: Thursday, February 6, 2014

Doctors in West Virginia are still advising some patients not to drink tap water weeks after it was deemed safe from contamination, according to a county health official.

Rahul Gupta, executive director at the Kanawha-Charleston Health Department, said some physicians are advising that patients on dialysis or with kidney or liver failure, chronic conditions or low immune systems shouldn't drink the water. Some pediatricians are also advising that children under 3 not drink the water, according to Gupta. And the Centers for Disease Control and Prevention advised pregnant women to consider a different water source.

The CDC's Tanja Popovic said yesterday that the advisory was intended to "empower" pregnant women to make their own health choices and that the water was "appropriate for use."

State schools Superintendent James Phares said some students complained of lightheadedness, itchy eyes and noses yesterday, and two schools in the state closed early because the licorice smell in the water resembled what was detected during the Jan. 9 spill (<u>AP/London Guardian</u>, Feb. 5). -- **HG**

ClimateWire -- Fri., February 7, 2014 -- Read the full edition

1. SCIENCE: Climate change becomes a rapid, unplanned survival experiment for animal species

In the 1993 blockbuster movie "Jurassic Park," a sleazy scientist played by Jeff Goldblum quips that "life finds a way." For real biologists, climate change is like a massive, unplanned experiment, one that may be too fast and strange for some species to survive it.

2. ADAPTATION: Israel is creating a water surplus using desalination

SEDE BOQER, Israel -- In the land of milk and honey, water has always been in short supply. Researchers here have linked temperature rise and drought to migration patterns across this arid region dating back to biblical times. Now, for the first time in its history, Israel is on track to experience a water surplus.

TODAY'S STORIES

- 3. BUSINESS: Oil and coal trains plus extreme weather create long delays for Amtrak passengers
- 4. MARKETS: Calif. to urge need for 2030 goal in meeting longer-term GHG emissions cuts
- <u>5. EMISSIONS: Experts worry that China's trajectory points to a high-carbon future</u>
- 6. RESEARCH: Forests and fires may have caused higher temperatures in prehistoric times
- 7. RESEARCH: Scientists and policymakers alike agree water availability is a top issue in U.S. -- survey
- 8. NEGOTIATIONS: European Parliament wants stronger climate targets
- 9. BUSINESS: IMF chief calls for cutting fossil fuel subsidies, fighting climate change
- 10. WEATHER: Higher chance of El Niño later this year, agency says
- 11. SCIENCE: Vanishing wildflowers, not humans, may have killed off ice age beasts

EnergyWire -- Fri., February 7, 2014 -- Read the full edition

1. UTILITIES: Dominion's exit from retail electric business illustrates risks of market

The polar vortex that slammed the eastern half of the nation in early January may have been the last straw for Dominion Resources Inc., the Richmond, Va.-based energy company that on Jan. 31 abruptly said it would sell its unregulated retail electric business as soon as possible, preferably by the end of the first quarter.

2. GRID: Calls mount for FERC to fix PJM market

Calls are growing for federal regulators to quickly address record-setting costs that electricity generators are incurring as a result of spiking natural gas prices during this winter's deep freeze across the eastern United States.

ELECTRIC UTILITIES

- 3. POWER MARKETS: Low gas, power prices have nuclear giant mulling closures
- 4. TRANSMISSION: DOE to release analysis of Northern Pass alternatives before draft EIS
- 5. EXPORTS: Former Obama adviser offers support for wider oil trade
- 6. GRID: Cold weather across U.S. prompts gas shortage warning in Calif.
- 7. ELECTRICITY: Energy demand rose last year in U.S., along with emissions
- 8. UTILITIES: Minn. power interests refile lawsuit against GE over plant accident

OIL, GAS AND COAL

- 9. BUSINESS: Chesapeake keeps a foot in gas as it pushes for a new future
- 10. LNG: Regulators challenge market need for New England gas-import project

11. POLICY: Greenspan shoots down oil-exports talk
12. REGULATION: Pa.'s Corbett calls for more gas production under state land
13. REGULATION: Nev. writes first fracking rules as oil company explores new field
14. TRANSPORT: Refiner to upgrade tank cars in race to beat expected oil-by-rail regs
15. OIL SPILLS: Native groups line up against proposal to ease use of dispersants in Alaska
16. TRANSPORT: Feds to inspect tracks near N.D. oil-train derailment
17. PIPELINES: Echoes of Keystone XL ring in report on TransCanada's Energy East line
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